IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6918 OF 2005

Rashtriya Shikshan Sanstha
and Ors. .. Petitioners

Versus

Smt.Shyama Manohar Mokashi & Anr.. Respondents

Mr.A.A.Garge i/b. R.S.Apte for petitioners
Mr.P.N.Joshi for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 16th February 2006.

P.C.

. Heard Mr.Garge appearing for petitioner and Mr.Joshi appearing for respondent No.1.

Respondent No.2 is formal party.

2. This petition challenges the orders passed by the executing court from time to time directing the petitioners herein to vacate the premises in their possession so that the first respondent/ landlord/ owner can comply with the notice issued by second respondent Corporation to carry out immediate repairs to the structure which is dilapidated. It is not disputed that the law postulates that in case a party like petitioners herein does not vacate the premises, then civil court can be approached and appropriate directions sought so that there is compliance with the order passed/ notice issued by the local authority.

3. In the present case, upon an application under section 417 of the Bombay Provincial Municipal Corporations Act the Joint Civil Judge, Senior Division Kalyan partly allowed the

application of first respondent and directed petitioners to vacate the premises temporarily for complying with the requisitions in the notice which has been issued by Kalyan Dombivili Municipal Corporation on 2nd June 2002 and 22nd May 2003.

4. When this petition was placed before this Court, considering the fact that petitioners are running a primary school and that interest of students is involved, I called upon parties to apply their mind and arrive at an appropriate arrangement so that the premises are repaired and thereafter made available to the petitioners herein.

5. After aforesaid view was expressed, an affidavit is placed by the power of attorney holder of first respondent owner and an undertaking is given to this Court by the first respondent that repair work would be carried

approximately within 80 days from the date vacant possession is given of suit premises. The necessary certificates would be obtained and thereafter petitioners would be placed in possession of the premises. An endeavour is being made to place petitioners in possession before the commencement of the academic year 2006-07.

6. Keeping in mind this statements and responding thereto, petitioners have placed an affidavit and have pointed out that on account of difficulties viz., current academic year being in progress and pending examinations, possession of the premises could not be handed over till date. However, in turn petitioners have given an undertaken in the affidavit of one Sanjay Hinge, Managing Committee Member of Sanstha that vacant possession of premises would be handed over to the first respondent on 1st April 2006.

7. In the light of this affidavit and considering the order passed by the trial court, it is not necessary to scrutinise the legality and validity of the order passed by the trial court which essentially is a temporary arrangement. Since parties have mutually agreed to comply with the order of trial court and have placed affidavits incorporating specific undertakings therein, petition is disposed of. Undertakings are accepted. Liberty is given to both sides to apply.

(S.C.DHARMADHIKARI, J)